**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 8882 OF 2005**

Shri Jagradeo Pal Nirhu ... Petitioner

V/s

Kamruddin Yusuf Ansari ... Respondent

Mr. A.R. Mishra for the petitioner.

Mr. R.A. Thorat for the respondent.

**CORAM: P.V. KAKADE, J.**

**DATED: 7TH FEBRUARY, 2006**

**P.C.:**

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner has preferred this petition against the order passed by the lower appellate Court dated 21.9.2005 dismissing the appeal and confirming the judgment and order passed by the Trial Court dated 11.7.2002 decreeing respondent/plaintiff's suit and directing the petitioner defendant to deliver vacant peaceful possession of the suit property consisting Room No.1, K-4425(4), 6/ squatters Colony, Prem Nagar,

Jogeshwari, Mumbai - 400 060, within three months from the date of the order.

3. Plaintiff/respondent came with the case that he is the owner and landlord of the suit premises and defendant was a monthly tenant therein paying Rs.47.25 p.m. It was the case of the plaintiff that defendant remained in arrears of rent from 1.1.1976 till October, 1979. Notice was sent by R.P.A.D. as well as U.C.P. The notice of payment sent by R.P.A.D. was returned unserved and the defendant did not pay arrears of rent within one month after the demand notice and the suit for recovery came to be filed.

4. The defendant resisted the suit by filing the written statement by taking various contentions inter-alia submitting that the suit premises are declared as vacant land as well as covered under the Slum Improvement Act and, therefore, the suit was not maintainable. Secondly, it was contended that the land on which the suit structure is constructed is owned by the Municipal Corporation and patch holder’s card was issued to the defendant as well as all residents in the locality. According to the defendant, he was paying necessary taxes to the Government and, therefore,

plaintiff was not the owner of the structure and the suit was not maintainable. On such and other grounds, the suit was sought to be dismissed with costs.

The learned Trial Judge adjudicated the suit on merits and came to the conclusion that the plaintiff had proved that he was owner of the property and the defendant was defaulter in rent and suit came to be decreed holding that the contentions raised by the defendant were proved.

The appeal was carried to the lower appellate Court, who, after hearing both parties confirmed the judgment and order of the lower Court holding that the suit premises did not belong to the Bombay Municipal Corporation and plaintiff was the landlord of the suit premises and, as such, the plaintiff had completed the legal formalities to seek vacant possession of the suit premises under the provisions of the Bombay Rent Act. It was also held that the suit premises was not declared under Slum Improvement Act and the suit was failed and as such was dismissed.

5. At the outset, it may be noted that, at the time of hearing of this writ petition, the appellant has sought

to produce through the affidavit the documents alongwith the list of documents on the ground that the documents which were produced in the Trial Court were not taken into account as those were not found relevant and, as such, the Court below have erred in reading the said documents. The learned counsel for the petitioner also sought to put reliance on the provision of the Maharashtra Slum Areas Act, 1971 in order to show that the land in question was deemed slum area and the tenant was a protected person within the meaning of the provisions of the said Act. However, both the Courts below were of the view that the evidence which was filed in support of the petitioner defendant's case was that of patch holder card in respect of the suit premises. However, on facts it was found that the said card discloses different number than the number of the suit premises and, therefore, such evidence was totally discarded by the lower Courts. The contention sought to be raised on behalf of the petitioners to the effect that the suit premises was the vacant land belonging to the Bombay Municipal Corporation is also discarded by both the Courts below on the very ground that there was no evidence on record and the document of patch holder card was found not relevant in the sense that it reflected some other land and not the suit premises. It

is also clear that the defendant did not examine any witness from the B.M.C. or other competent authorities nor proved the contentions with regard to the alleged protected status or property being deemed slum within the meaning of the Maharashtra Slum Areas Act. The lower Court has rightly observed that even if the patch holder card is taken into consideration, still it cannot be accepted and relied upon and does not duly proved by examining the witness from the competent authority to prove census of the suit premises.

6. Be that as it may, the fact remains that the defendant though has raised certain contentions, was unable to support those with cogent evidence in order to rebutt the plaintiff’s case that he was landlord of the suit premises.

Once this position is reached, then there is no dispute that the demand notice is proved to be served and the defendant was in arrears of payment of rent for more than six months and, as such, was rendered defaulter in law.

7. Under the circumstances, both the Courts below have rightly decreed the suit and thus judgment of the lower

Court would brook no interference.

8. In the result, the petition stands dismissed with no order as to costs.

9. At this stage, the learned counsel for the petitioner prayed for extension of protection granted earlier. In view of the facts and circumstances, the decree not to be executed for a period of four weeks from the date of this order on condition that the petitioner shall not create any third party interest in the suit premises.

C. c. expedited.

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